

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

MIGUEL TAMAYO,)	
)	
Plaintiff,)	8:11CV61
)	
V.)	
)	
CGS TIRES US, INC., DJR)	ORDER
HOLDING CORPORATION, and)	
HI-LINE COOPERATIVE, INC.,)	
)	
Defendants.)	
)	

On April 23 and April 26, 2012, Defendants CGS Tires US, Inc. (“CGS Tires”) and DJR Holding Corporation (“DJR”) filed joint motions (filings [45](#) & [54](#)) seeking to strike Plaintiff’s expert designations as untimely. In response, Plaintiff admitted that his designations were late and, in explanation, Plaintiff’s counsel informed the Court that he simply misunderstood the Court’s progression order.

Following a telephone conference on the motions, the Court declined to strike Plaintiff's expert designations ([filing 69](#)). The Court reasoned that at this stage in the litigation, no prejudice or harm would occur by allowing Plaintiff's tardy designations to stand. Nonetheless, because Plaintiff's conduct necessitated the filing of the motions to strike, the Court informed the parties that it would entertain an award of reasonable attorneys' fees and costs.

CGS Tires has filed an application for an award of fees and costs ([filing 73](#)), seeking fees in the amount of \$2,850.00.¹ In support of its application, CGS Tires offers the affidavit of its attorney, Matthew Enenbach, as well as several billing statements. ([Filing 74.](#)) Mr. Enenbach avers that he has a billing rate of \$190.00 per hour and that he spent a good amount of time preparing the motions to strike. Mr. Enenbach notes that CGS Tires is not

¹ DJR has advised the Court that it will not pursue an award of fees or costs.

seeking to recover all fees actually incurred in preparing the motions to strike, including time spent by another attorney on the matter. Mr. Enenbach also states that CGS Tires is not requesting an award of fees for time spent preparing a motion for summary judgment which included an argument based on Plaintiff's lack of expert witnesses.

Having considered the matter, the Court finds that, under the circumstances, an award of \$ 2,850.00 is unreasonable. Plaintiff's expert designations were clearly tardy and Plaintiff admitted as much. Given this, it seems to the Court that preparing motions to strike would not be a complex matter. Accordingly, the Court will award CGS Tires fees for two-and-a-half hours of attorney time. Based on Mr. Enenbach's hourly rate, Plaintiff will be ordered to pay the sum of \$475.00.

IT IS ORDERED that CGS Tires' Application for the Award of Fees & Costs ([filing 73](#)) is granted, in part. CGS Tires is hereby awarded fees in the amount of \$475.00. Said amount shall be paid or offset at the conclusion of this litigation.

DATED July 3, 2012.

BY THE COURT:

**S/ F.A. Gossett
United States Magistrate Judge**